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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ALTAIR INSTRUMENTS, INC., a
12 California corporation,

13 Plaintiff,

14 vs.

15 WALMART, INC., a Delaware
16 corporation, and DOES 1 through 10,

17 Defendants.

Case No. 2:18-cv-09461-R-FFM

PROTECTIVE ORDER

18 In light of the Stipulation of the parties filed herewith, and good cause
19 appearing therefore, **IT IS HEREBY ORDERED** as follows:

20 1. This Protective Order shall govern the disclosure of materials
21 designated as Confidential Material in this litigation. Confidential Material, as used
22 in this Order, shall refer to any document or item designated as Confidential or
23 Highly Confidential – Attorneys’ Eyes Only, including but not limited to,
24 documents or items produced during discovery, all copies thereof, and the
25 information contained in such material. Nothing in this Order shall require any
26 party to produce any specific documents or category of documents which a party
27 deems inappropriate for production.

28 2. Confidential Material, as used in this Order, consists of the following

1 materials and categories of materials:

- 2 a) Materials relating to any privileged, confidential, or nonpublic
3 information, including, but not limited to, trade secrets,
4 research, design, development, financial, technical, marketing,
5 planning, personal, or commercial information, as such terms
6 are used in the Federal Rules of Civil Procedure (FRCP) and
7 any applicable case law interpreting FRCP 26(c)(1)(G),
8 contracts; proprietary information; vendor agreements;
9 personnel files; claim/litigation information; and nonpublic
10 policies and procedures shall be deemed “Confidential.”
11
12 b) Materials containing corporate trade secrets, nonpublic
13 research and development data, pricing formulas, inventory
14 management programs, other strategic sales or business
15 information not known to the public; information obtained
16 from a non-party pursuant to a non-disclosure agreement; and
17 customer related Protected Data shall be deemed “Highly
18 Confidential – Attorneys’ Eyes Only.”
19
20 c) Protected Data shall refer to any information that a party
21 believes in good faith to be subject to federal, state or foreign
22 data protection laws or other privacy obligations. Examples
23 of such data protection laws include but are not limited to The
24 Gramm- Leach- Bliley Act, 15 U.S.C. § 6801 et seq.
25 (financial information); and, The Health Insurance Portability
26 and Accountability Act and the regulations thereunder, 45
27 CFR Part 160 and Subparts A and E of Part 164 (medical
28 information). Certain Protected Data may compel alternative
or additional protections beyond those afforded Highly
Confidential – Attorneys’ Eyes Only material, in which event
the parties shall meet and confer in good faith, and, if
unsuccessful, shall move the Court for appropriate relief.

3. If any party seeks to designate additional documents or categories of
documents produced by any other party as Confidential Material, it will be the
burden of the party seeking protected status to move for a court order designating
the materials as confidential after the parties confer.

4. The parties agree that such Confidential Material as described in
paragraph 2 should be given the protection of an order of this Court to prevent

1 injury through disclosure to persons other than those persons involved in the
2 prosecution or defense of this litigation.

3 5. To designate information as confidential, the producing party shall
4 mark Confidential Material with the legend “CONFIDENTIAL - SUBJECT TO
5 PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY - SUBJECT TO PROTECTIVE ORDER” and shall submit confidential
7 discovery, such as answers to interrogatories or answers to requests for admissions,
8 in a separate document stamped with the appropriate legend. The Receiving Party
9 may make copies of Confidential Material and such copies shall become subject to
10 the same protections as the Confidential Material from which those copies were
11 made.

12 a. Information on a disk or other electronic format may be
13 designated confidential by marking the storage medium
14 itself with the legend “CONFIDENTIAL- SUBJECT TO
15 PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY - SUBJECT TO
17 PROTECTIVE ORDER.” The Receiving Party shall mark
18 any hard-copy printouts and the storage medium of any
19 permissible copies of such electronic material with the
corresponding legend contained on the original and such
copies shall become subject to the same protections, as the
Confidential Material from which those copies were made.

20 b. Information disclosed at any deposition of a party taken in
21 this action may be designated by the party as confidential by
22 indicating on the record at the deposition that the
23 information is confidential and subject to the provisions of
24 this Order. Alternatively, the party may designate
25 information disclosed at the deposition as confidential by
26 notifying the court reporter and other parties in writing,
27 within 10 business days of receipt of the transcript, of the
28 specific pages and lines of the transcript which are
designated as confidential. The parties may agree to a
reasonable extension of the 10 business day period for
designation. Designations of transcripts will apply to audio,
video, or other recordings of the testimony. During such 15

business day period, the entire transcript shall receive confidential treatment. Upon such designation, the court reporter and each party shall affix the “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” or ‘HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY - SUBJECT TO PROTECTIVE ORDER’” legend to the designated pages and segregate them as appropriate.

- c. Copies of material described in paragraph 2 above, or incorporated into paragraph 2 by Court Order, and which were produced without the designation of “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY - SUBJECT TO PROTECTIVE ORDER” may be so designated later if the Producing Party failed to make such designation at the time of production through inadvertence or error. If such information has been disclosed to persons not qualified pursuant to paragraph 7 below, the party who disclosed such information shall take reasonable efforts to retrieve previously disclosed Confidential Material and advise such persons that the material is Confidential.

6. Pursuant to Federal Rule of Evidence (FRE) 502(d), disclosure (including production) of information that a party or non-party later claims should not have been disclosed because of a privilege, including, but not limited to, the attorney-client privilege or work product doctrine (“Privileged Information”), shall not constitute a waiver of, or estoppel to, any claim of attorney-client privilege, attorney work product, or other ground for withholding production as to which the Producing Party would be entitled in the litigation or any other federal or state proceeding. Pursuant to FRCP 26(b)(5)(B) and PRE 502(e), the Receiving Party hereby agrees to return, sequester, or destroy any Privileged Information disclosed or produced by the Producing Party upon request. If the Receiving Party reasonably believes that Privileged Information has been inadvertently disclosed or produced to it, it shall promptly notify the Producing Party and sequester such information until

1 instructions as to disposition are received. The failure of any party to provide notice
2 or instructions under this Paragraph shall not constitute a waiver of, or estoppel to,
3 any claim of attorney-client privilege, attorney work product, or other ground for
4 withholding production as to which the Producing Party would be entitled in the
5 litigation or any other federal or state proceeding. This provision is designed to
6 foreclose any arguments that by making such production, the production of
7 Confidential Materials subject to a legally recognized claim of privilege, including
8 without limitation the attorney-client privilege, work-product doctrine, or other
9 applicable privilege:

- 10 a. was not inadvertent by the Producing Party;
- 11 b. that the Producing Party did not take reasonable steps to
- 12 prevent the disclosure of privileged documents;
- 13 c. that the Producing Party did not take reasonable or timely
- 14 steps to rectify such disclosure; and/or
- 15 d. that such disclosure acts as a waiver of applicable
- 16 privileges or protections associated with such documents.

17 This provision shall be interpreted to provide the maximum protection allowed by
18 FRE 502 and shall be enforceable and granted full faith and credit in all other state
19 and federal proceedings by 28 U.S. Code § 1738. In the event of any subsequent
20 conflict of law, the law that is most protective of privilege and work product shall
21 apply. Nothing contained herein is intended to or shall serve to limit a party's right
22 to conduct a review of documents, ESI or information (including metadata) for
23 relevance, responsiveness and/or segregation of privileged and/or protected
24 information before production.

25 7. Any Confidential Material and the information contained therein shall
26 be disclosed only to the Court, its staff, and counsel of record, and also shall be
27 disclosed on a need-to-know basis only to the parties, counsel's staff personnel,
28 employees of a party to whom disclosure is necessary in connection with the
preparation for and trial of this action, any witnesses in the case (including
consulting and testifying experts) as may from time to time reasonably be necessary

1 in prosecution or defense of this action, and court reporters, videographers and their
2 staff. Qualified recipients of materials marked “Highly Confidential-Attorneys’
3 Eyes Only” shall include only the following: In-house counsel and law firms for
4 each party and the secretarial, clerical and paralegal staff of each, the Court and its
5 staff, consulting and testifying experts retained by a party, and court reporters,
6 videographers and their staff. Confidential Material shall not be disclosed to any
7 outside experts or consultants who are current or former employees or current or
8 former consultants of a direct competitor of any party named in the litigation.
9 Counsel shall advise all persons to whom Confidential Material is disclosed
10 pursuant to this Order of the existence of this Order, and shall provide all such
11 persons (other than the Court and its staff, court reporters, videographers and their
12 staff) with a copy of this Order. Counsel also shall require all persons, except the
13 Court, its staff, the parties, counsel of record and counsel’s staff personnel, court
14 reporters, videographers and their staff to execute the Affidavit attached as Exhibit
15 A, prior to the disclosure of Confidential Material. It shall be the obligation of
16 counsel, upon learning of any breach or threatened breach of this Order, to promptly
17 notify counsel for the Producing Party of such breach or threatened breach. Counsel
18 shall not otherwise offer or permit disclosure of any Confidential Material, its
19 contents, or any portion or summary thereof. Disputes concerning the confidential
20 nature of such materials shall be resolved by the Court upon motion prior to
21 dissemination of any Confidential Material.

22 8. A party that seeks to disclose any materials designated Highly
23 Confidential – Attorneys’ Eyes Only to any consulting or testifying expert first must
24 make a written request to the Producing Party that sets forth the full name of the
25 expert and the city and state of his or her primary residence, attaches a copy of the
26 expert's current resume, identifies the expert's current employer(s), identifies each
27 person or entity from whom the expert has received compensation or funding for
28 work in his or her areas of expertise or to whom the expert has provided

1 professional services (including in connection with a litigation, at any time during
2 the preceding five years), and identifies (by name and number of the case and
3 location of court) any litigation in connection with which the expert has offered
4 expert testimony, including through a declaration, report, or testimony at a
5 deposition or trial, during the preceding five years. A party that makes a request and
6 provides the information specified above may disclose the subject materials to the
7 identified expert unless, within 14 days of delivering the request, the Producing
8 Party sends a written objection to the designating party. Any such objection must
9 set forth in detail the grounds on which it is based. A party that receives a timely
10 written objection must meet and confer with the Producing Party to try to resolve the
11 matter by agreement within seven days of the written objection. If no agreement is
12 reached, the party objecting to the disclosure to the expert may file a motion seeking
13 to prevent such disclosure. In any such motion, the Producing Party shall bear the
14 burden of proving that the risk of harm that disclosure would entail outweighs the
15 disclosing party's need to disclose the subject materials to its expert. If no such
16 motion is filed within 7 days of the meet and confer, the requesting party may
17 disclose any Highly Confidential – Attorneys' Eyes Only materials to the expert
18 under the terms of this Order.

19 9. Persons having knowledge of Confidential Material and information by
20 virtue of their participation in the conduct of this litigation shall use such knowledge
21 and information for that purpose only and only as permitted herein, and shall not
22 disclose such Confidential Material, their contents or any portion or summary
23 thereof to any person(s) not involved in the conduct of this litigation. If any person
24 having access to the Confidential Material herein shall violate this Order, he/she
25 may be subject to sanctions by the Court.

26 10. The provisions of this Order shall not affect, and this Order does not
27 limit, the use or admissibility of Confidential Material (or references to that
28 material) as evidence at trial, or during a hearing or similar proceeding in this action

1 or as part of the record on appeal, provided that either party may seek an appropriate
2 Court Order to protect Confidential Material.

3 11. Nothing in this Order shall be deemed to preclude any party or
4 interested member of the public from seeking and obtaining, on an appropriate
5 showing, a modification of this Order including additional protection with respect to
6 confidentiality of material or the removal of a confidential designation. Should
7 counsel or an interested member of the public disagree with any designation of
8 material as confidential, he or she first shall attempt to resolve such dispute with the
9 parties' counsel and, if unsuccessful, apply to the Court for a determination as to
10 whether the material or information should remain designated as Confidential
11 Material. Pending resolution of any challenges, the material at issue shall continue
12 to be treated as Confidential Material until ordered otherwise by the Court.

13 12. The restrictions set forth in any of the preceding paragraphs shall not
14 apply to information or material that was, is or becomes public knowledge in a
15 manner other than by violation of this Order.

16 13. Without written permission from the Producing Party or court order
17 secured after appropriate notice to all interested persons, a party may not file in the
18 public record in this action any Confidential Material. In accordance with Local
19 Rule 79-5.1, if any papers to be filed with the Court contain information and/or
20 documents that have been designated as "Confidential" or "Highly Confidential –
21 Attorneys' Eyes Only," the proposed filing shall be accompanied by an application
22 to file the papers or the portion thereof containing the designated information or
23 documents (if such portion is segregable) under seal; and the application shall be
24 directed to the judge to whom the papers are directed. For motions, the parties shall
25 publicly file a redacted version of the motion and supporting papers.

26 14. In the event Confidential Materials or portions of transcripts are sealed
27 as confidential by the Court as described in paragraph 13 above, they shall be filed
28 in an envelope bearing the following designation when deposited:

1 **CONFIDENTIAL**

2 IN ACCORDANCE WITH THE CONFIDENTIALITY
3 ORDER OF THE COURT, THE CONTENTS OF THIS
4 ENVELOPE SHALL BE TREATED AS CONFIDENTIAL
5 AND MUST NOT BE SHOWN TO A PERSON OTHER
6 THAN THE COURT, ATTORNEYS IN THIS CASE, OR TO
7 PERSONS ASSISTING THOSE ATTORNEYS.

8 15. This Order shall continue to be binding throughout and after the
9 conclusion of this litigation, including all appeals. Within thirty (30) days of
10 settlement or final adjudication, including the expiration or exhaustion of all rights
11 to appeal or petitions for extraordinary writs, each party or non-party to whom any
12 materials were produced shall, without further request or direction from the
13 Producing Party, promptly destroy all documents, items or data received including,
14 but not limited to, copies or summaries thereof, in the possession or control of any
15 expert or employee. The Receiving Party shall submit a written certification to the
16 Producing Party by the 30-day deadline that (1) confirms the destruction/deletion of
17 all documents, items, or data, including any copies of Confidential Materials
18 provided to persons required to execute Exhibit A - Affidavit, and (2) affirms the
19 Receiving Party has not retained any copies, abstracts, compilations, summaries or
20 any other format reproducing or capturing any of the Confidential Material.
21 Notwithstanding this provision, counsel is entitled to retain any attorney work
22 product.

23 16. If any person receiving documents covered by this Order is served with
24 a subpoena, order, interrogatory, or document or civil investigative demand
25 (collectively, a "Demand") issued in any other action, investigation, or proceeding,
26 and such Demand seeks material that was produced or designated as Confidential
27 Material by someone other than the Receiving Party, the Receiving Party shall give
28 prompt written notice by hand or electronic transmission within five (5) business
days of receipt of such Demand to the party or non-party who produced or
designated the material as Confidential Material, and shall object to the production

1 of such materials on the grounds of the existence of this Order. The burden of
2 opposing the enforcement of the Demand shall fall upon the party or non-party who
3 produced or designated the material as Confidential Material. Unless the party or
4 non-party who produced or designated the Confidential Material obtains an order
5 directing that the Demand not be complied with, and serves such order upon the
6 Receiving Party prior to production pursuant to the Demand, the Receiving Party
7 shall be permitted to produce documents responsive to the Demand on the Demand
8 response date, provided sufficient notice of the Demand is provided. Compliance by
9 the Receiving Party with any order directing production pursuant to the Demand of
10 any Confidential Material shall not constitute a violation of this Order. Nothing in
11 this Order shall be construed as authorizing a party to disobey a lawful subpoena
12 issued in another action.

13 17. In the event additional parties join or intervene in this litigation, the
14 newly joined party(ies) shall not have access to Confidential Material until its/their
15 counsel has executed and at the request of any party, filed with the Court the
16 agreement of such party(ies) and such counsel to be fully bound by this Order.

17 18. The parties agree that nothing in this Order shall be deemed to limit the
18 extent to which counsel for the parties may advise or represent their respective
19 clients, conduct discovery, prepare for trial, present proof at trial, including any
20 document herein, or oppose the production or admissibility of any information or
21 documents which have been requested.

22 19. This Order shall remain in full force and effect until such time as it is
23 modified, amended or rescinded by the Court.

24 IT IS SO ORDERED.

25
26 Dated: April 18, 2019



Judge of the United States District Court

EXHIBIT A

AFFIDAVIT

My name is _____. I live at _____.

I am aware that a Protective Order has been entered in the matter Altair Instruments, Inc. v. Walmart, Inc., No. 2:18-cv-09461-R-FFM, pending in the United States District Court, Central District of California, and a copy thereof has been given to me, and I have read and understand the provisions of same.

I acknowledge that documents and information designated as confidential pursuant to such Protective Order (“Confidential Materials”) are being disclosed to me only upon the condition that I agree to be subject to the jurisdiction of this Court and to that Order. I hereby agree to abide by such Order, subject to all penalties prescribed therein, including contempt of Court, for disobedience of said Order. I promise that the documents and information given confidential treatment under the Protective Order entered in this case will be used by me only in connection with assisting counsel for the parties in preparing for litigation of the above-captioned matters. I understand that any use of such Confidential Material in any manner contrary to the provisions of the Protective Order will subject me to the sanctions of this Court for contempt.

I shall not disclose nor permit to be reviewed or copied said Confidential Materials, or any information derived from, by any person other than the parties and counsel for the parties or members of their staff.

DATED: _____